



# OFFICE OF PROFESSIONAL ACCOUNTABILITY

## Closed Case Summary

Complaint Number OPA#2016-0462

Issued Date: 10/26/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual 5.002 (9) Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Will Report Certain Events</u> (Policy that was issued January 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual 5.001 (2) Standards and Duties: Employees Must Adhere to Laws, City Policy and Department Policy</u> (Policy that was issued April 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Final Discipline	N/A

### **INCIDENT SYNOPSIS**

The Named Employee responded to an active shooter incident.

### **COMPLAINT**

The complainant alleged the Named Employee may have used deadly force that was not reasonable, proportional and/or necessary. The preponderance of the evidence showed that the Named Employee fired at least four rounds from a rifle at the subject.

Prior to the Named Employee's use of deadly force, the subject had engaged in a crime spree of armed carjacking, aggravated assault and extremely dangerous driving that began in a downtown neighborhood of Seattle and ended approximately eight miles northeast. The subject's flight was ended when an unmarked police car rammed the subject's vehicle nearly head-on. Following the collision, the subject, whose vehicle was then surrounded on three sides by police cars and officers with drawn weapons, attempted to resume his flight. This attempt was met with a barrage of gunfire from the semi-encircling officers. The vehicle stopped and did not move again. The front and side-curtain airbags in the vehicle were deployed, making it impossible for the surrounding officers to see inside the car and determine the condition and activities of the subject. Attempts to get a response from the subject by calling out to him were met with silence.

A few minutes after the shots were fired and the subject's vehicle stopped, the Named Employee and other SWAT officers arrived on-scene. Two lieutenants were also there, one from the Patrol Division and one from SWAT. At some point before the Named Employee arrived, an officer launched a less-lethal plastic projectile through a shattered window in the subject's vehicle in an attempt to move an airbag out of the way to see inside. This did not succeed in moving the airbag. A team of six SWAT officers, including the Named Employee, assembled itself and devised a plan to contact the subject. The plan was for the team to approach the driver's side of the subject's vehicle and use a long stick through the window to move the deployed side-curtain airbag and assess the condition of the subject. The SWAT lieutenant at the scene was not consulted about this plan. It was conceived and put into action by the team leader. The SWAT team consisted of two officers with ballistic shields, one with the stick, two officers assigned to provide lethal cover and the team leader. The Named Employee was assigned to be one of the lethal cover officers. As such, his job was to protect himself and the other officers in his team should a deadly threat be presented. The SWAT team followed the plan and moved up to the driver's door of the subject's vehicle. After a short period of time, the Named Employee fired at least four rounds from a Department issued rifle and struck the subject who was later pronounced dead.

## **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Review of In-Car Videos (ICV)
3. Search for and review of all relevant records and other evidence
4. Interviews of SPD employees

## **ANALYSIS AND CONCLUSION**

Prior to addressing the two allegations concerning the Named Employee's use of deadly force, it is necessary to comment on the decisions and actions of persons other than the Named Employee that ultimately placed the Named Employee face-to-face with an armed, demonstrably dangerous subject. The Named Employee was not responsible for the actions

and decisions of others, but the options available to him at the time he decided to use deadly force were directly impacted by what preceded. His actions are best understood in that context.

The OPA investigation showed that the decision to form the team and proceed to make contact with the subject inside the car was made by the team leader. The team leader was a SWAT officer, not a sergeant or command level supervisor. It was not clear whether a SWAT sergeant was on the scene before the team began to move towards the subject's vehicle and it appears neither of the two lieutenants were asked for or gave explicit approval before the SWAT team began advancing on the subject's vehicle.

The purpose of the team in approaching the subject's vehicle, as understood by those interviewed by OPA, was to end the deadly threat posed by the subject. Both the Named Employee and the team leader stressed to OPA their concern the subject could at any moment drive the vehicle towards officers or members of the public and/or fire his weapon from inside the car at the surrounding officers and bystanders. At that moment, the officers had no means to assess the condition of either the subject or his vehicle. When asked why the SWAT team did not wait for additional commanders, officers and equipment to arrive so as to increase the options available for resolving the situation, both officers stressed their concern the subject could at any moment begin driving and/or firing. They emphasized the large number of exposed officers and members of the public in the surrounding area.

The Named Employee was familiar with the immediate and surrounding area where this incident took place. He was aware of the likely presence of children, the elderly and a high volume of foot traffic due to the proximity of a library, churches, and homes. These factors contributed to the Named Employee's assessment action needed to be taken very quickly.

Senior police commanders (lieutenants and above) are expected to take command of major incidents so their experience and training can be brought to bear on the problems at hand. They are expected to assess threats to officers and public safety, coordinate the actions and placement of officers and resources, and formulate plans to address the many problems presented. There were two lieutenants at the scene prior to the movement of the SWAT team towards the subject vehicle. One of the two lieutenants at the scene should have taken control of the incident and exercised command over the assembled officers. Certainly, the SWAT lieutenant, who was right there, could have taken command of the SWAT officers at that location and coordinated a plan to deal with the subject while seeking to minimize the danger to officers, the public and the subject. As it was, neither lieutenant was clearly in charge, nor was either coordinating overall police activities before the SWAT team began their movement toward the subject's vehicle. The SWAT team acted on its own, certain they had to act immediately. In the words of the Named Employee, "at that particular time and that particular location, we were the contingency plan."

Before the Named Employee and the rest of the SWAT team began their move towards the subject's vehicle, insufficient thought seems to have been given to the full range of possible scenarios, as well as other options available to bring this situation, so full of danger for officers

and the public, to a resolution. Once the Named Employee arrived at the driver's window, face-to-face with the subject and tightly grouped with the other SWAT officers, any movement by the subject, even movement to comply with the shouted orders to show his hands, could reasonably be seen as a threat. The decision to move up to the subject's vehicle and confront him at the driver's window, made in the absence of a clear command presence at the scene, set in motion a series of actions that ended in the use of deadly force.

The issue of scene command will be addressed separately in an associated Management Action Recommendation letter to the Chief of Police.

It was alleged the Named Employee may have used deadly force that was not consistent with the requirements of SPD Policy. SPD Policy §8.200(1) limits the use of force by SPD officers to force that is reasonable, necessary and proportional.

**Reasonable:** "The reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against the rights of the subject, in light of the circumstances surrounding the event. It must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."

**Necessary:** "Officers will use physical force only when no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose."

**Proportional:** "To be proportional, the level of force applied must reflect the totality of circumstances surrounding the situation at hand, including the nature and immediacy of any threats posed to officers and others."

At the time the Named Employee fired his rifle at the subject, the Named Employee was aware from reliable sources along with his own observations that the subject had committed armed robberies with a firearm, shot at police officers during a vehicle pursuit and attempted to run over or crash into police officers and members of the public. The Named Employee had a reasonable belief the subject was armed and had shown the intent and ability to use a firearm against police officers. Consequently, should the Named Employee reasonably believe the subject was acting in a threatening manner or in a way that was consistent with drawing or preparing to draw a firearm, the use of deadly force by the Named Employee would be necessary and proportional. The core question to be addressed in this instance is whether or not it was reasonable for the Named Employee, at the moment he fired his rifle at the subject, to believe the subject posed an imminent threat of death or serious physical injury.

During the Named Employee's first interview with the SPD Force Investigation Team (FIT), which took place the same day as the event, the Named Employee was asked to recount what was going on as he and the other SWAT team members walked up to the driver's side of the subject's vehicle.

As the Named Employee and the other SWAT officers approached the subject's car, the Named Employee knew neither the condition of the subject nor his intent. The Named Employee told the FIT investigators he thought the subject was still armed, lying in wait inside the car and ready to ambush any officer who presented himself. It was reasonable for the Named Employee to consider and be prepared for such an attack; such a thing was well within the realm of possibility. The Named Employee later told OPA of his fear as he approached the subject's car in the middle of the group of SWAT officers. The Named Employee believed the subject was waiting to kill him and/or other officers. When the Named Employee saw the subject inside the car, slumped forward and away from the driver's door, he interpreted the subject's posture as confirmation of a planned attack.

Once the SWAT team moved up to the driver's side window and the airbag was lifted with the stick, the Named Employee was able to see the subject. The Named Employee told OPA the subject was alive and breathing. The Named Employee had his rifle up and pointed at the subject as he and at least one other officer yelled at the subject to show his hands. The Named Employee said the subject's hands were not visible. He could see the subject's upper arms but his hands were underneath the deflated front airbag. The position of the subject's arms was such that the Named Employee assumed the subject's hands were together between the subject's legs. The Named Employee said he was concerned the subject was holding a gun concealed under the airbag and might at any moment bring it up and begin shooting at him and the other SWAT team officers. The Named Employee described the subject's posture as "slumped." The Named Employee told OPA the subject had his lower back against the back of the driver's seat, but his upper back was leaning forward and slightly to his (the subject's) right, away from the officers. The subject's head, too, was ducking and off to the right. The Named Employee said it looked to him like the subject was trying to hide from the officers in order to gain a "position of advantage" to shoot the officers before they could react. The Named Employee also told OPA he could not see any visible signs of injury to the subject.

The Named Employee told OPA that he told the subject several times to show his hands. Another member of the SWAT team who could also see the subject inside the vehicle shouted that he could not see the subject's hands. According to the Named Employee, the subject "refused" to comply with the Named Employee's shouted commands to show his hands. When asked by OPA to describe how the subject communicated this refusal, the Named Employee said, "by simply not complying." OPA asked if the subject said anything verbally to signal his refusal and the Named Employee replied he had not.

In response to the Named Employee's commands directed at the subject, according to the Named Employee, the subject sat up more straight in the seat and began to move his head to the left. The Named Employee interpreted this movement as an effort by the subject to look at the Named Employee and the officers next to him. The Named Employee said he (the Named Employee) was only partially covered by a ballistic shield held by one of the SWAT team members and his (the Named Employee) head and one shoulder were exposed to the subject. As mentioned before, the Named Employee was concerned the subject had been lying in wait for the officers with a gun in his hands underneath the airbag. As the subject sat up and began

to move his head to the left, the subject's arms also moved as a natural consequence. The Named Employee told OPA he believed the subject was preparing to bring the gun out from under the airbag to shoot him. The Named Employee explained to OPA there was no way for him (the Named Employee) to quickly move to a position of cover because he was in the middle of a "stack" of six officers tightly bunched together.

The Named Employee's perception of the subject's movements as the beginning stages of an attack was reasonable, given the totality of the circumstances. It was possible the subject was preparing to attack the Named Employee and the other officers. It was also possible the subject was responding to the sudden appearance of a SWAT officer armed with a rifle and shouting commands by turning his head towards the source of the sound; or, perhaps, the subject was beginning to comply with the order to bring his hands out from underneath the deflated airbag. Regardless of the subject's true intent, absent some verbalization by the subject that would have convinced the Named Employee of a true intent to surrender, any movement by the subject could reasonably be seen as the beginning of an attack on the officers. Once the SWAT team moved up to the driver's door and the side curtain airbag was moved, it was nearly inevitable the Named Employee or one of the other SWAT officers would shoot the subject, assuming he was not already dead. There seems little else they could do, once they were in that position.

Believing the subject was about to shoot him, the Named Employee fired multiple rounds from his rifle at the subject.

In summary, the Named Employee's perception of the subject's movements as the beginning stages of an attack was reasonable, given the totality of the circumstances. The Named Employee's responding use of deadly force was also reasonable, necessary and proportional.

It was alleged the Named Employee may have used deadly force (a firearm) when the threat of death or serious physical injury to the Named Employee or others was not imminent.

SPD Policy §8.200(4) limits the use of deadly force by SPD officers to:

*... circumstances where threat of death or serious physical injury to the officer or others is imminent. A danger is imminent when an objectively reasonable officer would believe that:*

- *A suspect is acting or threatening to cause death or serious physical injury to the officer or others, and*
- *The suspect has the means or instrumentalities to do so, and*
- *The suspect has the opportunity and ability to use the means or instrumentalities to cause death or serious physical injury.*

Based on the preponderance of the evidence from this investigation, the OPA Director found it reasonable for the Named Employee to conclude the subject had the means, opportunity and ability to cause death or serious physical injury to the Named Employee and others.

## **FINDINGS**

### **Named Employee #1**

#### **Allegation #1**

The preponderance of the evidence from the OPA investigation showed that the Named Employee's use of deadly force was reasonable, necessary and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*.

#### **Allegation #2**

The preponderance of the evidence from the OPA investigation showed that it was reasonable for the Named Employee to conclude the subject had the means, opportunity and ability to cause death or serious physical injury to the Named Employee and others. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: Use of Deadly Force*.

The OPA Director's letter of Management Action recommendation to the Chief of Police is attached to this report.

*NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.*



# City of Seattle

Office of Professional Accountability

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October 18, 2016

Chief Kathleen M. O'Toole  
Seattle Police Department  
PO Box 34986  
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION (2016OPA-0462)

Dear Chief O'Toole:

The Office of Professional Accountability (OPA) recently completed an investigation into the fatal officer-involved shooting that took place on December 6, 2015. In particular, OPA investigated the use of deadly force by an officer who was part of a SWAT team that made contact with a subject who had endangered the lives of the public and police officers alike while engaged in a crime spree ranging from the Belltown neighborhood north of downtown Seattle, to the Laurelhurst/Wedgwood neighborhoods of northeast Seattle. The suspect committed acts of armed carjacking and drove in a manner that displayed an utter disregard for the lives of other motorists and pedestrians. A large number of Seattle Police Department (SPD) officers pursued, followed and attempted to stop him. More than once, the suspect fired a weapon at pursuing SPD officers. The evidence from the extensive investigation by the Force Investigation Team (FIT) leaves little doubt the situation caused by the actions of this one person was extremely dangerous and, for some time, created the threat of death or great bodily harm to officers and the public. It is also a fact that the actions of the subject created a dynamic and rapidly changing environment in which police commanders, supervisors and officers made split-second decisions.

Earlier this year I wrote to you about this incident and made two Management Action Recommendations regarding command and control of complex incidents and SPD's various policies concerning the use of police vehicles to end pursuits (see: Management Action Recommendation (2016OPA-0469) dated June 29, 2016).

**I write today to renew my previous recommendation to form "an internal SPD "Study Team" to carefully examine the command, control and individual actions that made up the many attempts to stop and capture the suspect in this incident," and to add emphasis to it in light of what OPA learned during its most recent investigation into this incident.**

Following is the recommendation I made in June.

*Recommendation #1: I recommend the formation of an internal SPD "Study Team" to carefully examine the command, control and individual actions that made up the many attempts to stop and capture the suspect in this incident. Several times throughout the incident, SPD officers actively pursued the vehicle being driven by the subject. A SPD lieutenant took command of the police response, including but not limited to the pursuit aspect of it. Based on the FIT and OPA investigations and drawing on the discussions conducted by the Force Review Board during their*



*deliberations, I believe the Department will gain great insight into how command and control of such events can be improved. For example, the lieutenant acting as the overall incident commander also held the role of "controlling supervisor" of the on-again/off-again pursuit of the suspect. The supervision of the pursuit itself required close attention and split-second, life and death decisions. It would be very easy for an incident commander in a situation such as this to become overwhelmed by the complexity of the incident and the increasing number of responsibilities required by policy and the reality of the situation. In this particular incident, the incident commander might have benefited by delegating certain responsibilities to others, a key element of the Incident Command System (ICS) used by SPD and most emergency services throughout the country<sup>1</sup>. It is my hope, should SPD decide to form such a "Study Team" and act on its insights and suggestions, the Department will be prepared in the future to exercise even better command and control over similar or worse situations (e.g., a coordinated crime spree or a Mumbai/Paris-style terrorist attack).*

To objectively assess the use of deadly force by a member of the SWAT team, OPA inquired into the decisions and actions of other officers and supervisors that ultimately placed the officer face-to-face with an armed, demonstrably dangerous subject. While the officer was not responsible for the actions and decisions of others, the options available to him at the time he decided to use deadly force were directly impacted by what preceded.

The OPA investigation found that the decision to form the team and proceed to make contact with the subject inside the car was made by the team leader. The team leader was a SWAT officer, not a sergeant or command level supervisor. It is not clear whether a SWAT sergeant was on the scene before the team began to move towards the subject's vehicle and it appears neither of the two lieutenants who were there were asked for or gave explicit approval before the SWAT team began advancing on the subject's vehicle.

The purpose of the team in approaching the subject's vehicle, as understood by those interviewed by OPA, was to end the deadly threat posed by the subject. Both the officer who used deadly force and the SWAT team leader stressed to OPA their concern the subject could at any moment drive the vehicle towards officers or members of the public and/or fire his weapon from inside the car at the surrounding officers and bystanders. At that moment, the officers had no means to assess the condition of either the subject or his vehicle. When asked why the SWAT team did not wait for additional commanders, officers and equipment to arrive so as to increase the options available for resolving the situation, both officers stressed their concern the subject could at any moment begin driving and/or firing. They emphasized the large number of exposed officers and members of the public in the surrounding area.

Senior police commanders (lieutenants and above) are expected to take command of major incidents so their experience and training can be brought to bear on the problems at hand. They are expected to assess threats to officers and public safety, coordinate the actions and placement of officers and resources, and formulate plans to address the many problems presented. There

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<sup>1</sup> "ICS is a standardized on-scene incident management concept designed specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries."  
[https://www.osha.gov/SLTC/etools/ics/what\\_is\\_ics.html](https://www.osha.gov/SLTC/etools/ics/what_is_ics.html)

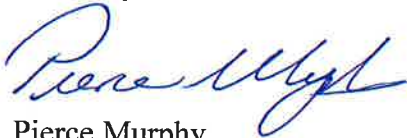
were two lieutenants at the scene prior to the movement of the SWAT team towards the subject's vehicle. One of the two lieutenants at the scene should have taken control of the incident and exercised command over the assembled officers. Certainly, the SWAT lieutenant, who was right there, could have taken command of the SWAT officers at that location and coordinated a plan to deal with the subject while seeking to minimize the danger to officers, the public and the subject. Based on my review of the OPA investigation, neither lieutenant was visibly in charge, nor was either of them coordinating overall police activities before the SWAT team began their movement toward the subject's vehicle. The SWAT team acted on its own, the officers convinced they had to act immediately.

It seems insufficient time and opportunity may have been taken to consider a wide range of possible scenarios, as well as other options available to bring this situation, so full of danger for officers and the public, to a resolution before the SWAT team began their move towards the subject's vehicle. Once the SWAT team arrived at the driver's window tightly grouped together and face-to-face with the subject, any movement by the subject, even movement to comply with the shouted orders to show his hands, could reasonably be seen as a threat. The decision to move up to the subject's vehicle and confront him at the driver's window, made in the absence of a clear command presence at the scene, set in motion a series of actions that ended in the use of deadly force.

While it is impossible to know how or even if the outcome would have been different had command of the incident been more clearly established, I believe much can be learned from this incident and applied to the training and development of SPD commanders.

Thank you very much for your prompt attention to this matter of public trust and confidence in the professional conduct of the SPD and its employees. Please inform me of your response to this recommendation and, should you decide to take action as a result, the progress of this action.

Sincerely,



Pierce Murphy  
Director, Office of Professional Accountability